EXHIBIT 15

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In Re:	)	
	)	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	)	
	)	
as representatives of	)	No. 17-BK-4780
	)	
PUERTO RICO ELECTRIC POWER AUTHORITY,	)	
	)	
Debtor.	)	
	)	

HEARING

BEFORE THE HONORABLE JUDITH GAIL DEIN
UNITED STATES MAGISTRATE JUDGE

United States District Court
1 Courthouse Way, Courtroom 18
Boston, Massachusetts 02210
February 26, 2019

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A P P E A R A N C E S:

ROBERT S. BEREZIN, ESQ., Weil Gotshal & Manges, for National Public Finance Guarantee Corporation.

ELLEN M. HALSTEAD, ESQ., HOWARD R. HAWKINS, JR., ESQ. and WILLIAM J. NATBONY, ESQ., Cadwalader Wickersham & Taft, for Assured Guaranty Municipal Corp.

MARGARET DALE, ESQ. and LAURA STAFFORD, ESQ. Proskauer Rose, for the Financial Oversight and Management Board for Puerto Rico (FOMB).

ASHLEY PAVEL, ESQ., O'Melveny & Myers LLP, for interested party AAFAF.

ELIE J. WORENKLEIN, ESQ., Debevoise & Plimpton, LLC, for Syncora Guarantee Inc.

LUC DESPINS, ESQ., Paul Hastings LLP, for Official Committee of Unsecured Creditors.

P R O C E E D I N G S

COURTROOM CLERK: United States District Court for the District of Massachusetts is now in session, the Honorable Judge Dein presiding. Today is Tuesday, February 26, 2019. The matter of In Re: The Financial Oversight and Management Board for Puerto Rico as representatives of Puerto Rico Electric Power Authority, case number 17-BK-4780, will now be heard. Will the parties please identify themselves for the record.

MS. DALE: Your Honor, Margaret Dale for the Financial Oversight Management Board as representative of the debtor PREPA.

MS. STAFFORD: Your Honor, Laura Stafford as representative of the Financial Oversight and Management Board as representative of PREPA.

MS. PAVEL: Your Honor, Ashley Pavel of O'Melveny & Myers on behalf of AAFAF.

MR. NATBONY: Good afternoon. William Natbony on behalf of Assured Guaranty Municipal Corp., Assured Guaranty Corp., and will also be speaking primarily on behalf of the other insurers this afternoon.

MR. HAWKINS: Okay. Good afternoon, Your Honor. Howard Hawkins from Cadwalader, also for Assured Guaranty.

MS. HALSTEAD: Ellen Halstead of Cadwalader, also for Assured.

MR. DESPINS: Good morning, Your Honor. Luc Despins Paul Hastings, counsel for the Official Committee in the PREPA case.

MR. WORENKLEIN: Elie Worenklein from Debevoise & Plimpton on behalf of Syncora Guarantee.

MR. BEREZIN: Good afternoon, Your Honor. Robert Berezin for National Public Finance Guarantee Corp.

THE COURT: Welcome, everybody. Welcome, everybody here in Boston and those in New York and Puerto Rico as well. I will not repeat the instructions for appropriate behavior in the courtroom. You have it all memorized by now.

And I see that we did time it right today, that it's not snowing, it's not windy. Everybody flew in from wherever they were supposed to be. So hopefully we'll have an efficient and productive afternoon here.

I'm going to ask counsel to just keep in mind, I guess, to make sure that we follow what's been redacted and unredacted. It's kind of hard to keep track of that. And I assume that there are some people who are participating who have actually not seen some of the unredacted declarations. So if you feel that the court is straying or if counsel is straying, just make sure that that's known.

All right. I will hear from the Oversight Board to begin with, and I would like you to address, if you think it's relevant, the fact that the newly filed expert reports, whether

that changes the argument at all.

MS. DALE: Thank you, Your Honor. Your Honor, Margaret Dale, for the Financial Oversight and Management Board.

First of all, Ms. Stafford and I are going to split the argument. I'm going to start with why the insurers should be compelled to produce the loss reserve information that they submitted to the New York regulator relating to the PREPA bonds, including why loss reserves are relevant to collateral valuation, and Ms. Stafford is going to address the privilege arguments that the insurers have raised to block the disclosure of loss reserve information. That's how we're going to split it up.

Just to address your first question regarding the declarations that were filed yesterday, we took a very quick look at them. We don't think that they change this motion at all. There was no additional collateral valuation material submitted with those declarations that relate to the value of secured collateral on the date of the petition here and thereafter. There are some arguments made about collateral value. They again relate to claims of mismanagement predominantly, but I don't think that they make any difference with respect to this motion, Your Honor.

THE COURT: Okay. The other thing I would like, I think the relevance argument is really very critical to me,

okay?

MS. DALE: Sure.

THE COURT: So we need to spend some time on that.

MS. DALE: Yes, ma'am.

THE COURT: And in your argument, addressing to the extent you can, responding to the declarations, how they describe how the reserves are created, your reply brief didn't seem to take that head-on. Okay?

MS. DALE: Sure. So Your Honor, the relevance of the collateral valuation documents to the receiver motion we think is indisputable. And this relates to why we think the loss reserve documents are important, because we think they are relevant to collateral valuation.

The starting point is the First Circuit's decision on the initial receiver motion. There, that the court held that in order to lift the automatic stay on the ground of lack of adequate protection, the moving party must demonstrate the value of its secured collateral on the petition date and that the collateral is declining in value.

The insurers acknowledge this. In paragraph 13 of their opposition, they cite the First Circuit's decision regarding, quote, "The importance of assessing the pre-petition value of the bondholders' collateral (if any) and whether the bondholders face a threat of uncompensated diminution in such value."

THE COURT: So you're not -- is it your argument that the First Circuit has dictated that or you're just saying that's one of the points that the First Circuit has suggested that the reviewing court decide?

MS. DALE: I think what we're saying is that that is the standard upon which a motion for lack of adequate protection has to meet. So you have to prove that you had secured collateral of some value on the petition date and that it has diminished in value over time. We think that that is basically a burden that the movants here need to satisfy given the motion that they have brought. And that is why we think this information that we're seeking now is critical.

THE COURT: All right. But the First Circuit raised a number of suggested -- I guess what I'm saying is I don't think the motion to compel is the place we would determine the appropriate standard.

MS. DALE: I agree with that.

THE COURT: And I gather there would be a fight over what the appropriate considerations are, maybe.

MS. DALE: I'm not sure, because I did quote you from their brief at page 13, so it seemed like at least we were on the same page about what the First Circuit said.

So, as we said, the insurers have put the value of their collateral on center stage through the proceeding that they commenced to lift the stay. The threshold issue here is

whether there was any PREPA property in existence on the submission date subject to a security interest that has diminished in value and then the extent of any diminution. If they can't make that showing, if the insurers can't make that showing, we think that they can't meet the threshold issue on the lift-stay motion, and we should not be put to the expense and time of the discovery and the hearing on the lift-stay motion.

Today what we're here for is the insurers' failure to produce documents that we say comply with the First Circuit's directive. They have not identified in their lift-stay motion the value of the collateral on the petition date that they say is diminishing. They have failed in discovery to produce any documents to that effect, and they have failed in response to this motion to do so. There's no description of the collateral in existence on the petition date. There are no Bates numbers that have been provided to us as to any responsive documents. We see general, vague generalities about collateral in what we understand their answer to be to the First Circuit directive, which we don't think is a fair answer, but their answer is that the collateral is a contractual pledge of an income stream, PREPA's revenues after the petition date, which they allege is being impaired because of the alleged mismanagement at PREPA.

We think that's wrong as a matter of law, but that's not the issue that we're here today about. The issue that

we're here today about, saying it again, is the obligation to produce documents that identify and value the collateral existing on the petition date.

THE COURT: So you've all identified the collateral, though, as being the revenue stream.

MS. DALE: We have not. That is what the --

THE COURT: So what do you say that the collateral is?

MS. DALE: We say that the collateral -- it's complicated, Your Honor, and we certainly will get to this in the opposition to lift-stay motion. But we think secured collateral is actually only monies on deposit in a particular fund pursuant to the trust agreement. It's called the sinking fund. And we will explain all of this, but we believe that is the only secured collateral that the insurers had on the petition date, July 2, 2017, and that money is still there. So our argument is you're completely secured, there's been no diminution in the value of your security collateral.

THE COURT: So for discovery purposes, though, that's information that you have, right?

MS. DALE: Correct.

THE COURT: You have access to the account, and that's not something that you would expect the movants to produce documents on?

MS. DALE: Unless they had non-privileged documents. We've given them documents relating to that information, so

they might be giving it back to us in discovery. But yeah, that is information that we or PREPA would have.

THE COURT: Okay.

MS. DALE: But that's just our side of the argument, Your Honor. Their argument is their collateral is -- I don't know. They haven't really completely identified very carefully what they claim their secured collateral is. And that's part of what we were doing in discovery, was trying to pin them down as to what collateral do you say was secured as of the petition date, what was its value as of the petition date, what was the value as of the date you brought the lift-stay motion, so we can decide whether we agree that you need adequate protection or you are adequately protected.

As I said, we didn't come, we didn't start this discovery looking for loss reserve information, Your Honor. We started this discovery with document request number 1, which is Exhibit A to our moving papers, seeking documents showing as of June 30, 2017 and afterwards the value of your collateral, as that term is used in the lift-stay motion and the draft complaint. And each of the insurers said we'll produce to you non-privileged information responsive to request number one, essentially.

And then over time we were asking them, where are the documents that reflect the valuation of your collateral. And after months of not getting any documents responsive to that,

we pursued the production of the loss reserve documents, which was request number 21 to our discovery request, because we think that's the only place now where we're going to be able to get some indication of how they were valuing their collateral.

So let me answer your first question to me, which was discuss the relevance of loss reserve information to collateral valuation and then how the declarants sort of describe it, how they arrive at their loss reserve information that we're seeking.

So while on the one hand the insurers claim that loss reserves are completely irrelevant to collateral valuation, on the other, they concede that the loss reserves have probative value, and that is their opposition, paragraph 1. They contend that the probative value is minimal. But again, that is simply their view, and we think that -- well, we don't know because we haven't seen them, so we're hard pressed.

And in this respect, Your Honor, it may be that an in camera inspection is another way to sort of -- for the court to look at this. Loss reserves are by definition the measure of what the insurers need to put aside to satisfy existing insurance obligations net of their collateral. That is the definition of loss reserves. So we're hard pressed to think how loss reserve information that they supplied to their regulator cannot at least reflect that in some way. And again, as I said --

THE COURT: So they've described to you how they've set it up. They've described to you in general terms and more specific terms in the declaration how the loss reserve is created and the assumptions that are made which, to paraphrase, I think I can go into, that you're not -- that PREPA is not paying anything right now. Let's start with that. And that they need to have enough money to reserve for PREPA not paying for X amount of time. And the question of how much time that is is their estimate of how long the Title III will take. That's one portion of it, all right?

MS. DALE: Yeah.

THE COURT: So accepting that they said to you that's part of what we're doing, why do you think that that reflects --

MS. DALE: Yes, I get it.

THE COURT: -- the collateral?

MS. DALE: I'm sorry if I'm going to repeat myself. Two reasons. One, because they indicate in their opposition that the loss reserve information has probative value here.

THE COURT: You need to understand what that probative value is.

MS. DALE: Exactly. Aren't we in a position, as the debtor's representative here, to be able to evaluate that for ourselves?

And as I said, secondly, the New York law, the New

York insurance law -- this is at page 8 of our reply brief -- requires that insurers, quote, "maintain loss reserves net of collateral." So they tell us that they're submitting this information to their regulators quarterly, regularly. So are they saying that they're not -- you know, that they're not following what the mandate is for what they're supposed to be submitting?

I haven't seen the information, Your Honor. I've attached as Exhibit A or Appendix A to our reply brief, we put the publicly filed portion of the publicly filed financial statement of MBIA, National's parent, just to show that they do put out loss reserve information publicly. I know that in the declarations they said we don't do it down to the level of each credit or each bond that they're insuring, but they do give that information to their regulator.

And so is it just numbers? What is it that they're -- how are those numbers of what the loss reserve -- under all these scenarios, how are those numbers disclosing potentially privileged input or advice? If it's just numbers, we don't think that's privileged information, and we don't think that a number is going to disclose any kind of privilege of what went into that number. Ms. Stafford is going to discuss the privilege issues more.

THE COURT: What does that do for you? What does that do for you if they gave you a number without an explanation?

MS. DALE: Well, I don't know, but it might be helpful for us to understand because we think that we know what PREPA, what the secured -- the value of their secured collateral was on a certain date. We think we know that. We have an opinion about that. We say it's the money that was in the sinking fund. They don't agree with us. So we'd like to understand how are they looking at it? What are they valuing? What do they think is the secured property of PREPA that they're entitled to adequate protection on? That's the whole lift-stay motion that we're going through an awful lot of discovery and depositions and briefing on for a full-blown hearing in May. And I think this collateral valuation issue is like the threshold issue for that motion.

So they haven't given us any collateral valuation information. Maybe they should be precluded then from supplying anything going forward if you determine that we're not entitled to this information in the loss reserves, and the record will be where the record will be. And that will be the end of that.

THE COURT: So the expert reports that they produced included some financial information about the revenues and expenses that were anticipated. It sounds to me like what they put forward, at least in this morning in my brief reading was, we're going to argue that the fiscal plan should be implemented or that PREPA says that the fiscal plan should be implemented

and PREPA can't do it with its current management and that we will accept, for at least present purposes, PREPA's analysis as to the benefits of that fiscal plan. You know, and then they have an analysis as to the savings or the benefits of implementing the fiscal plan.

That's how they're presenting their lift-stay motion. I think it requires experts. They've given you their experts. They've given you their analysis. Where I'm kind of stuck is I think you're just presenting different standards for when is a receiver appropriate, and I think you fight that out in connection with the lift-stay motion.

MS. DALE: We're trying to fight that out in connection with the lift-stay motion, but I think that we're entitled to discovery of how they value their collateral, whatever they think it is.

THE COURT: But that's not what they're arguing.

MS. DALE: But that's the -- sorry.

THE COURT: You're arguing, you're saying this is something that you could argue, we don't think that's the right standard, or, we think the collateral is just this one account, so this is the information that we have. But if the movants -- I'm sorry, but this is where I'm stuck, I'll be honest with you. If this is where the movants are not saying, they're not saying we have X number of revenue, we had X number of net revenues on day 1 and on day 15 we had this and on day 60 we

had that. It's not what they're arguing. So why do you -- one, why do you get that information if they're not arguing it. And two, they've also told you that that number isn't part of their loss reserve calculation.

MS. DALE: Your Honor, the termination of the lift-stay motion for a lack of adequate protection, there is a standard that is applied. And while the insurers can argue that mismanagement is a cause of diminution and the like, that is not what the law requires them to show.

It requires, as I started this out, with a valuation of collateral on the date that the filing occurs and then some valuation thereafter, probably on the date of the motion that they made, to show that, you know, we used to have a million dollars and now we only have $500,000 because this has been dissipated and we need that more protection around the million that we were supposed to have at the beginning. That's the standard.

So we don't agree -- I know we're on different -- sort of different levels here about what we're arguing. But why isn't the Oversight Board as PREPA's representative entitled to discovery into what we believe to be the correct standard to the extent that they have materials that reflect the value in dollar terms of the collateral that was securing their bonds? We should have it. If they say they have nothing, there's nothing, it's whatever you gave us, but we don't have anything

independent, then I think that the order that we were looking for, some indication that that will be where the record will be, and that will be the end of it.

But we don't believe -- because they've identified that -- and I apologize for repeating myself. But they've identified that this has some value, some probative value, they indicated, and the whole raison d'etre of loss reserves is to figure out how much collateral do you have and what other monies are you going to have to put on top of that so that you can satisfy your obligations. So it just seems -- it just seems inconsistent to us that the way they're valuing their loss reserves gives absolutely -- you know, no element of that has anything to do with how they're valuing their collateral.

THE COURT: Do you agree, though, that -- can I talk? Am I allowed to talk?

COURTROOM CLERK: They're just having --

THE COURT: Nobody can hear me? So exciting.

COURTROOM CLERK: So I think Chris is coming up.

THE COURT: All right. Well, we'll have to take a minute once he comes up. But do you agree that the declarations that were filed say that the value of the collateral is not part of the loss reserve?

MS. DALE: I think that very clearly they say that.

THE COURT: Okay.

MS. DALE: If you don't have any other questions, I

would either take a break until we have the audio fixed, or Ms. Stafford is ready to address the second part of the argument.

THE COURT: Actually, I want to continue this before we get to privilege. So let's do it that way. But why don't we wait one minute. I don't have anything that important to say, but they apparently want to hear me say it.

COURTROOM CLERK: Apologies.

THE COURT: Is he on his way?

COURTROOM CLERK: Yes, he should be.

MR. NATBONY: I'll await your signal, Your Honor. Thank you.

THE COURT: I think so. They can hear you. They can hear him?

COURTROOM CLERK: Yes.

THE COURT: So why don't you talk, and I'll wave at you.

COURTROOM CLERK: He's on his way up.

THE COURT: Might as well get started.

MR. DESPINS: I'm just wondering, Your Honor, the Committee is supporting the Board on this, so I'm happy to go after, but typically we would go --

MR. NATBONY: That's fine with me, Your Honor.

THE COURT: I thought you weren't talking.

MR. DESPINS: We filed an affirmative motion.

THE COURT: I'm not going to get there. If you want

to let him go --

MR. NATBONY: That's fine, Your Honor.

MR. DESPINS: Your Honor, I'll be very brief. Luc Despins with Paul Hastings on behalf of the Committee. The Committee supports the Oversight Board on this motion.

I think it's important to set the legal stage, and I think you started doing that, which is, to lift the stay, you either have to -- you have to show cause, which can include a decline in value of the collateral. But then there's kind of a preclusion issue, which is, if they're going after cause but not for diminution of value of their collateral, they have to say that and say, Your Honor, that's all we're doing. We're saying mismanagement. We're saying that the only thing that's important is mismanagement and we're going to put all our eggs in that basket, and that's okay. They can do that.

But if they also want to allege diminution of value of collateral then the question is if they have documents, and I'll get to whether they do or not, but if they have documents that show the value of collateral on the petition date, any diminution and increase since then, that is clearly is relevant and should be produced. What I think they're saying is that our documents really don't address that at all, so trust us on that, you don't need them. Well, that's not the way it's played. From a burden point of view, these loss reserve calculations are easy to produce. They're not voluminous.

They can limit them to professional eyes only. There are all sorts of protections they can get.

THE COURT: Let me just see, is whoever is listening, can you hear me now?

MR. DESPINS: It doesn't appear so.

THE COURT: I feel like I'm on my cell phone.

COURTROOM CLERK: They said not yet.

THE COURT: Not yet. You can continue.

MR. DESPINS: So basically I think I was done. The point is that if there's -- there's not the tremendous burden to produce this. They can get all sorts of protections against the disclosure of this, but clearly in a deposition of their expert, the Board will want to ask them, So tell me about these loss reserves. What is the implied diminution of value or not in there? And the expert can say, There is nothing in there about the value of collateral. I would find that bizarre, but that's possible.

But in terms of taking their declarations as gospel when the critical issue may be whether there's been a diminution or not in the collateral, I think we -- the court should not authorize that. But if they want to come up here and say, We're saying cause but not because of diminution of collateral, solely because there's mismanagement of this enterprise, then I think that they may be right, that we have no entitlement to see their loss reserves, but I don't think

that they will say that.

THE COURT: Well, we'll find out. But let me ask you also, do you agree that the declarations do say that the loss reserve does not involve an analysis of the collateral, the value of the collateral, of the diminution of value?

MR. DESPINS: I'll be candid, Your Honor. I looked at those declarations late last night. I think the intent of those declarations is that.

THE COURT: You're not pointing me to something that says I have concern about this.

MR. DESPINS: No, I cannot do that. But what I would say is that's for a deposition, these would be appropriate questions to ask them as to how is it that you're able to comply with your statutory duties to report on your net position, net of your collateral, and not have anything in there at all regarding the value of the collateral. That would be a fair question to ask.

Thank you, Your Honor.

MR. NATBONY: Thank you, Your Honor. And good afternoon. William Natbony on behalf of the insurers.

I just want to start because I think Your Honor has recognized this is a discovery motion. It's not a motion on the adequacy or the proof of the merits of the ultimate claims that will be decided by Judge Swain on the lift-stay motion. This is a discovery motion on a limited issue, and the insurers

have consistently told FOMB that any valuation documents they have in their possession were either produced or discussed in detail in the insurers' expert reports, including the ones that were served yesterday, or I might add, Your Honor, in PREPA's own possession, part of the collateral valuation here are revenues of PREPA, and PREPA's own documents that they have produced and that they have in their own possession have -- so part of it is what they already have and what they said to them they provided to us.

The insurers fully responded to the document requests and told them that there's nothing else to produce, but they want loss reserve information. And we've told them time and time again that the loss reserve information is either irrelevant because it doesn't contain the collateral valuations that they're looking for or that they're privileged.

What's happening I think here, Your Honor, is essentially they don't like the fact that they didn't see X or Y documents, and now they're trying to engage in basically a fishing expedition to try and get what is the most sensitive and essential financial information that an insurer has, which is these loss reserves.

THE COURT: Before we go there, though, counsel has argued that you've taken the position that it is somewhat probative, the loss reserves. Is it or isn't it?

MR. NATBONY: No, it's not probative to collateral

value at all. I mean, we've put in three declarations, Your Honor. And they are unchallenged, by the way -- I mean, by not only in any reply papers, which Your Honor noted, also here in the admissions before Your Honor. And these made very clear that the PREPA-based loss reserves were calculated without undertaking any valuation of PREPA's collateral. And if you look at the numbers and the other stuff that's in there, you don't get a collateral value from those numbers.

So their entire motion is basically based on speculation because they don't know how they calculated it. We as the insurers know, we've put in detailed declarations. So rather, as we've said to Your Honor and as we put in the declarations, these loss reserves are calculated by reference to percentage probabilities of various litigation and settlement scenarios that were developed in consultation with in-house and external counsel.

I won't go yet into the privilege issue because I know you want to deal with relevance first. But essentially, the only valuation that is going on here is outcomes in litigation and settlement. Not collateral value.

There really is no compelling need here for the FOMB to have these sensitive documents. When Your Honor asked them, What is it going to do for you, I mean, what you heard was, I really don't know. And I think the only compelling need here, Your Honor, is to avoid what would be a dangerous precedent of

requiring disclosure of this kind of particularly sensitive information without any real justification.

Loss reserve documents and information are sensitive information. To obtain these documents at this time would give the FOMB a rare and unprecedented peek at the inner workings of the innermost thoughts of the insurers and their counsel in the midst of litigation about probability of success, percentages of success, percentages of potential recovery, willingness to settle, possible settlement ranges. So you did hear someone say you could, you know, potentially put "For attorneys' eyes only," but this is the whole point. You don't want that information out there, you don't want that information, particularly because of the sensitivity of the issues. Other creditors participate in these proceedings.

So I think the short answer here is from the important perspective of relevance and proportionality alone, before even getting to the various privilege issues, the motion should be denied, and it should be denied because of the fact that the very documents that they admit that they're seeking have no relevance to the collateral value issue that they talked about.

THE COURT: So what is your response to the statement that says you're going to have to prove the collateral value at different dates?

MR. NATBONY: Well, the short answer here today is that's an issue for them to raise before Judge Swain in

whatever motion they want to make. It's not part of the discovery motion here. However, to go a step further, the documents that are talking about collateral, you've basically got several types of collateral. You've got the revenue stream. You've also got the covenants that we've talked about. Those are going to be legal issues, how do you prove them, how do you prove lack of protection or lack of adequate protection. Many of the documents that we have you've already put in an expert report that Your Honor looked at that talked about diminution, but you also have all these documents that PREPA themselves have produced. And these are documents that talk about revenue, they talk about expenses, they talk about revenue stream. But these aren't documents that are in our files that we have to produce. These are documents that are in their own files.

So when it comes to producing and when it comes to proving lack of adequate protection, when it comes to proving the existence of collateral on various different dates, we have that information through PREPA's own documents and through our experts. So we will be able to do it. The question is do we do it today? No. This is a discovery motion, Your Honor. And it's really limited on the loss reserve issue, and I urge the court to deny it.

THE COURT: So are you prepared to say that any presentation that you make in connection with the motions on

the value of the collateral would be limited to the documents in PREPA's possession or have been identified in the expert reports?

MR. NATBONY: Well, I'm not willing to stipulate to anything, Your Honor. I can say that we have told them time and time again, and I'll continue the representation, which is whatever documents we have with respect to the value of collateral we've either produced already, are either in PREPA's own possession or in the documents they've produced to us, or are part of expert reports.

THE COURT: Well, if you've produced them already in a mass of documents, I think you need to identify them as to which ones you believe reflect the value of collateral. Because what they're saying is you've produced none.

MR. NATBONY: Well, again, Your Honor --

THE COURT: I don't know.

MR. NATBONY: Again, we've produced schedules, we've produced a lot of documents that they've produced to us. But I can tell Your Honor and we've represented to them and will continue to represent that there's nothing else to produce, period.

So you've got a motion that by their own admission says what we're seeking here today are loss reserves, and you've got an admission that loss reserves, they don't know why they're asking for them. You also have three declarations that

say, okay, they're not related, it's not a valuation of collateral, has no valuations of collateral in them. That's the motion that's before Your Honor.

THE COURT: Well, the reason that they say they've brought it up is that you brought it up, that you're the ones that said, All right, we don't have anything but loss reserve documents, information, that could be he responsive, and we're not giving you that.

MR. NATBONY: Well, we never told them that loss reserve documents would be responsive. And just to correct the record, you know, what happened here is they said to us, We're not looking for loss reserve documents, we're not looking for your loss reserve documents, we don't want them, we don't want opinions of counsel, we don't want any mental impressions of what your counsel are advising you. And then when they looked at the production and they said, Okay, I don't really see anything that I like or that I want, so now let's go after loss reserves. So that's kind of what's happened.

So, you know, I think the answer of we brought it up, I'm not sure that's really the accurate record. But again, I will say everything that we've produced, you know, I mean, everything that we have with respect to the issues they've asked for, we have given them. There's nothing left to give.

THE COURT: All right. Then the other question that they raise was if you are required by law to set a loss reserve

that is your exposure less your collateral or that indicates that collateral is a relevant factor, how do you file loss reserve information without having the collateral?

MR. NATBONY: Thank you for your question, Your Honor.

THE COURT: I never know if that's a good statement or a bad statement.

MR. NATBONY: It's a fine statement. I have a response for you, Your Honor, and I have I think three points to make.

First, what we provided to the insurers and what they've attached as exhibits are aggregate reserves, not the PREPA-specific reserves that you're talking about. And the declarations that you have before Your Honor talk about the PREPA-specific reserves which are at issue here and how they are calculated. And in any event, they cite to I guess insurance law 6903(b)(1), and under that law, there's a specific definition of collateral.

And collateral, for the purposes of that provision, as I understand it -- and Your Honor, they just put this in their reply papers which we received on Friday, so this is my first opportunity to respond to that. But our understanding is when you look at section 6901(g), that defines collateral, it doesn't include bond collateral. It includes specific things like cash letters of credit and certain investments. So it's not to include things like rate covenants and pledges of

revenues.

But in any event, the bottom line is the loss reserves were calculated the way they were calculated. And the declarations that are before Your Honor remain unchallenged as to that process.

THE COURT: Okay.

MR. NATBONY: Thank you, Your Honor. I'll reserve on the privilege issues for a more appropriate time.

THE COURT: Thank you. Before you go, more representation from the movants.

MR. BEREZIN: Thank you, Your Honor. Again, Robert Berezin on behalf of National.

I just wanted to, on the relevance point, drive one thing home because Your Honor's first question to the Oversight Board's counsel was right on target, which was, what is the relevance of the loss reserves to collateral value. And counsel went on to explain exactly the way it's explained in their papers, that the Oversight Board views collateral as being exactly the net revenues that exist just before and then on the petition date, and then you need to show a diminution of that value to this date. And that is their view of collateral.

Okay. So when we say the word "collateral," I just want to be clear that that's what the Oversight Board is talking about. And the question is are the loss reserves relevant to that definition of collateral. That's what we're

here for. And the declarations are very specific that loss reserves do not cover a finite period of time, meaning the before, on the petition date to this point. They cover the entire life of the bonds. So interest and principal due over the entire life of the bonds. For National, the end point is 2035.

So you take this huge number of all the insured bonds over their life, how much does PREPA owe over that whole period, interest and principal. And then we go through the process of deciding what do we think is going to happen in the Title III in the negotiations with the Oversight Board. Do we think we're going to have the deal that's been made public with the ad hoc bondholder group. Okay, that's a factor. Do we think -- how are we going to do before Judge Swain in the First Circuit and Supreme Court if it ever comes to that. What do we think? And we come up with it.

What they will never is see or derive in any way, shape or form from our loss reserves is how much did PREPA have in its bank accounts at a particular point in time because that's not what loss reserves are. And there's only one set of declarations before this court. They are sworn-to declarations by officers of these companies. They're detailed and specific. That ends the inquiry.

These loss reserves are irrelevant. And the harm and undue burden under proportionality is obvious. It will disrupt

and undermine the mediation process that has been established by this court. It will undermine the litigation process by giving unfair insight to the Oversight Board's lawyers exactly in the manner that the work product doctrine forbids. It is period, end of sentence, over before you ever get to privilege on that basis.

THE COURT: The only question that I have is, even if you don't accept the Oversight Board's definition of collateral, do you have a definition of collateral that is reflected in the loss reserves? Do you know what I mean?

MR. BEREZIN: Yes, yes, Your Honor. And the answer is no. Because in our view, as we've articulated in the expert reports and in our papers, we refer to something under PROMESA that referred to the special revenue provisions of PROMESA. And we believe that PREPA's -- the lien that PREPA granted in its revenues constitutes special revenues, and we believe that special revenues are special. They're different. Congress protected them specifically.

So unlike, as counsel has referred to, the tests that I think dicta, the First Circuit referred to, those are the traditional non-special revenue liens. For example, I'm a creditor. There's a debtor. I have a lien on their building, their apartment building or something. And the question is, well, how much is that lien worth on the petition date, how much is in the bank accounts if that's what's secured, and then

has it been diminished in value through mismanagement of the apartment building.

Very different animal when you're talking about special revenues because outside of special revenues, a secured creditor's lien is established. The value of that lien is established as of the date of the filing of the bankruptcy. Now, you can come back and maybe modify that value on the time of a plan of adjustment, but special revenue goes on ad infinitum. It's a totally different animal. So we have a totally different view of collateral. Loss reserves don't relate to them either. We're taking the total amount owed and then we're applying litigation and settlement calculus to figure out what the reserve amount should be.

THE COURT: Anybody else on this side of the room?

MR. WORENKLEIN: No. We're relying on Assured's and National's arguments.

MS. DALE: Well, we just think that it's pretty unbelievable that sophisticated insurers like this are telling us that they haven't valued the collateral themselves, but they certainly have said that in open court and in these declarations, and that is where this record will be.

I just wanted to raise the issue that counsel raised. We originally weren't looking for loss reserve information because, as I told you at the beginning, they said they would give us collateral valuation documents in response to document

request number 1. And then when we didn't have anything, we continued to press on that, and we said, Will you look for collateral valuation documents that -- sorry -- that relate or reflect actuarial accounting or other aggregate estimates of likely payouts. This was during the meet and confer process. And they said, yeah, yeah, we'll go search for them. We said, okay, go search for those and we'll pull back on the loss reserve information. And then they came back and said, well, there's nothing non-privileged. There's no non-privileged actuarial accounting or other aggregate estimates of their likely payouts on the PREPA bonds. So we came back to the loss reserves for that reason because we had thought maybe we could make some kind of deal.

The other tissue I would raise, Your Honor, is in the National declarant, Mr. Bergonzi's declaration at paragraph 21, I'm not going to read it because again this was redacted, but, Your Honor, I think you should take a look at Mr. Bergonzi's declaration in paragraph 21, in particular what has been redacted, because it seems to indicate that the information that at least National provides to the New York State Department of Financial Services does not include some of the privileged information that might be going into these scenarios and other ways that they develop this information. That's not then --

THE COURT: That's why I asked you what the number

would --

MS. DALE: Help. But I think a number would help us. It might give us some indication of where their -- they just told us that they think this is special revenue bonds and they have now some kind of lien, you know, into the future. Okay, that's new information. And so what -- you know, how are they valuing their liens into the future. I mean --

THE COURT: I don't think that's new information.

MS. DALE: Well, understood, Your Honor. Their argument has always been that they have the collateral -- the covenant package is part of their collateral. I didn't mean to suggest that that was like --

THE COURT: They have also said that it extends through time, the amount continues. It's not set as of the date of the filing. And I think, as counsel has just explained it, the loss reserves are in a generic way everything we could possibly owe, less, assuming that nothing is paid by PREPA and then how much can we get out of PREPA due to settlement options or fiscal plan options or whatever options they are, but they're not based on a fixed amount.

MS. DALE: Understood. But generally loss reserve information over time would be reflective of whether the entity thought they were over-collateralized or under-collateralized, and you can see changes in loss reserves as having an impact on collateral.

THE COURT: My guess is if PREPA was paying something over the time that that would be a valid argument, but given as of now they're not paying anything, I can't imagine that that's a factor that's changed other than settlement. I mean, that makes sense to me, I guess is what I'm saying. When they explain how they've set the loss reserves, it makes sense to me in the context of where we are, the Title III, the insurance world, whatever. And I haven't seen anything from your side that says this is a ridiculous way to do loss reserves. You know, I don't see it, and it sort of makes sense to me.

But I do hear you that says, Well, they should be limited in this world then. You know, we've asked for this six ways to Sunday. When it comes to the motion, we shouldn't be hit with a different calculation that we haven't seen in some form, right?

MS. DALE: Thank you.

THE COURT: I'll hear you on the privilege.

MS. DALE: Yes, thank you.

MS. STAFFORD: Good afternoon, Your Honor. Laura Stafford, and I'll be addressing the privilege and work product issues, including the privilege waiver.

I'll address three points. First, that the loss reserve documents that are at issue here are not privileged; second, that even if they were privileged, any privilege attached to them would have been waived; and third, that even

if privilege has not been waived, under the circumstances the privilege must bend to the Oversight Board's need for these documents.

And three privileges have been asserted here. I'll start with the bank examiner privilege, and I'll address it just briefly because it doesn't apply, frankly, to the vast majority of documents that are at issue. To date, the New York Department of Financial Services has decided not to assert that privilege, which means there's no viable claim that either National or Syncora's documents are subject to that privilege, and any documents that Assured submitted to New York but did not submit to Maryland would likewise not be protected by the privilege.

Maryland's assertion also does not bind the court, and the court owes no deference to that determination. So if the court chooses, you may override the Maryland assertion of privilege over any documents belonging to Assured which were submitted to Maryland.

Moving on to the attorney-client privilege, Your Honor, the insurers' own declarants admit that these loss reserve calculations serve primarily a business purpose, are required by law and have nothing to do with litigation or any threat of litigation. The insurers themselves acknowledge they're required to create these documents for submission to their regulators and for the creation of the insurers' own

balance sheets. As you saw in Appendix A to our motion, they are a regulatory requirement that the insurers have been obligated to prepare since well before the Title III case. And just because an attorney was involved in preparing them doesn't mean that a document prepared otherwise in the ordinary course of business is now a privileged document.

Furthermore, the insurer's submissions don't demonstrate that the documents submitted by the insurers to their regulators actually reveal anything about the substance of counsel's opinions or advice or reveal anything about the actual back and forth discussions with counsel, including counsel's own analyses.

And that's the point that my colleague was raising a few moments ago with respect to the declaration that National has admitted. It doesn't appear that certain information that National might argue is privileged was ever actually submitted to the regulators at all. In any event, I think you mentioned a couple of times that these appear to be numbers, and whether or not we think there's any probative value to those numbers, it's difficult for us to understand how a number could possibly disclose privilege.

THE COURT: I'm assuming you want more than the numbers if you could get it.

MS. STAFFORD: Of course, but we don't frankly understand what these documents are and what they look like.

And if they are simply numbers, then we certainly don't understand how they're privileged. If they're numbers and calculations, we're not sure we understand how those could be privileged either. But depending on what they are and what they look like, that may be something that Your Honor may need to look at in camera. We don't understand how, based on what they've described them to us as or what we understand them to be could possibly be privileged on their face.

THE COURT: Well, would you agree -- assume with me that it's a description that says, We think that the Title III will last X number of years based on advice of counsel, and we have the following four claims against PREPA, and as a result of which, we will recover X, Y and Z over the next 20 years. Let's assume that's what it looks like. How does that fit in with your argument on attorney-client?

MS. STAFFORD: Well, we still think these are prepared primarily for business purposes, and therefore simply because they include these discussions that doesn't convert them magically into privileged documents.

To the extent that there are actual -- and I think that's something that would be need to looked at in camera, whether there's any material in there that would potentially include any privileged material, but we do think that because these are business documents basically don't reflect that type of attorney-client privilege information.

I'll move on to the work product doctrine. That, again, the declarants concede that these business documents are required for regulatory purposes and are prepared as part of standard business functions. And they can't establish that these business-oriented documents are required -- which they are required to prepare for regulatory purposes were prepared in anticipation of or because of litigation.

And that gets us to the First Circuit's test for work product doctrine, which has been laid out in Textron, as we mentioned in our papers. In order for the work product doctrine to attach, a document must be prepared because of litigation. It can't be a document that serves primarily a business function. And these documents are simply not prepared for any sort of litigation purpose. They're prepared for a regulatory purpose, as we discussed. And frankly, they would be required, if there had been no Title III filing, if there had been no automatic stay, they would still be obligated to create these same loss reserve documents that we seek.

THE COURT: Do you think the standard under the First Circuit is different than other places? Do you think Textron is different?

MS. STAFFORD: I do think it's different than some of the other cases they cited in their brief that found that those loss reserves may be work product protected, and I think in the First Circuit where this because-of test is required, the

documents that are created for the purpose of litigation can have a work product protection, but documents that are prepared to serve a business function, such as the tax reserves that were at issue in Textron, are very similar to the documents that are at issue here, where these documents are being prepared for the purpose of a business function, for the purpose of meeting a regulatory requirement, setting aside money that will be disclosed on balance sheets to investors as well.

So moving on to the issue of waivers, as the second issue I was planning to discuss. Notwithstanding any of these issues as to whether or not a privilege applies, the insurers waived any privilege they might have over these documents by sharing their loss reserve materials with third parties, here, the regulators.

With respect to the attorney-client privilege, it's of course black letter law that privilege waiver occurs when a privileged communication or document is disclosed to a third party. Disclosure of these alleged privileged materials is totally inconsistent with maintenance of attorney-client confidentiality. And I think this goes back to the question you were asking earlier about whether or not, if we assume that these materials include some sort of analysis of the outcome of Title III litigation, how many months or years it may last, even if that did include some amount of privileged material, by

disclosing it to their regulators that privilege was waived.

And the same goes for the work product doctrine, which, disclosure of these loss reserves to the regulators also waives their privilege. Work product protection is waived if disclosure substantially increases an opportunity for a potential adversary to obtain information. And that's exactly what happened here.

These materials, by being disclosed to the regulators, are exposed to a number of potential adversaries, at least the insurance regulators themselves are potential adversaries, particularly the case with respect to the New York regulator who has apparently declined to assert the bank examination privilege.

And second, documents held by the New York Department of Financial Services are subject to the New York Public Officers Law's general policy that public documents shall be available for public inspection and copying.

THE COURT: Well, they argue that they would fall within an exception.

MS. STAFFORD: They argue that they would, but there's no evidence to indicate that they actually would -- that if a public record request was filed, that they would actually be entitled to that protection. They don't make out an argument anywhere in their papers that these are trade secret documents that would be protected from disclosure.

So I'll move on to my final point, which is that even if Your Honor decides that these documents are privileged and that the privilege was not waived, the work product protection should be overcome. And this really takes us back to the issues that we were talking about earlier.

This is -- the insurer's calculation of collateral value is really in our view key to the lift-stay motion. And according to the insurers, the only documents in existence that they have that address how they value their collateral are the loss reserve calculation documents. If they don't have anything but these loss reserve documents and they won't produce them, in our view that in and of itself is a basis to deny the motion.

So in our view, we have a compelling need for this information simply because we have no other way of understanding how they are valuing their collateral. We are entitled to have some understanding of what they're doing to value that collateral.

So the only alternative in our view is that if these are the only documents they have and they won't let us have access to them, then we think the proper course, Your Honor, would be to preclude them from attempting to proffer evidence of the value of their collateral on the petition date and seeking to justify lifting the stay. Unless you have any further questions --

THE COURT: Thank you. Not yet. Mr. Despins, do you want to be heard on privilege?

MR. DESPINS: Not on this issue, Your Honor. Thank you.

MR. NATBONY: Thank you, Your Honor.

So Mr. Berezin will handle attorney-client privilege. I'm going to handle, if it's all right with Your Honor, work product and the bank examiner privilege and the waiver on work product.

So again, it's unchallenged here that the loss reserve information is directly tied to and the result of input from in-house and outside attorneys concerning litigation risk and settlement possibilities. The fact that PREPA-related reserves may also serve a business purpose is really of no consequence because as the cases have recognized, including Textron and at least three other cases in the district of Puerto Rico since Textron, the Westernbank case, the Mullins case, and W. Holding case, each of those talks about documents having the ability to have dual purposes.

And in fact, when you're talking about loss reserves, when you suddenly come into a process where there is anticipated litigation or actual litigation, and this has been going on at least since 2014 when there was anticipated litigation over PREPA's looming defaults and repudiation of its payment obligations, but certainly since 2017, which is when

they're asking for these documents, there has been anticipated litigation, you know, so that the reserves themselves, when they are calculated even by reference to the litigations, must be being prepared in anticipation of litigation.

So when you're talking about 10 percent, 15 percent of success probability, when you're talking about what is the percentage possibility of RSA being moved forward, what is the possibility of settlement negotiations and settlement ranges, so I think if you look, Your Honor, at the Schreib case in particular, and that's cited at page 20 of our brief, that is consistent with Textron and Westernbank and all the other cases that say, even if you've got a document that let's say serves a business purpose, when you've got that litigation or that anticipated litigation that comes your way, the purpose of the document essentially changes. And when you look at -- you know, when you're talking about loss reserves that are actually referring to the litigations, you know, that in our view means that it's not the same document in essentially the same form that it was before because it now, by necessity, has to account for the changed circumstances.

THE COURT: Textron dealt with handing the IRS the blueprint for how to sue them, right?

MR. NATBONY: Except -- I'm sorry, Your Honor. Go ahead.

THE COURT: No. So distinguish this from Textron.

MR. NATBONY: When you read Textron, it's very clear that the court found that there was no evidence of litigation purpose within the documents, and there was no actual or threatened litigation at the time. That's very different than what you have here.

Here you've got a situation where you have clearly anticipated litigation because of PREPA not meeting its obligations. And then of course since 2017 and since the Title III, you have actual litigation. So that I think is the difference. And even Textron admits that there can be instances when you have dual purposes. But they didn't find it there. They didn't find it. They clearly found a lack of evidence and no evidence. You certainly have no evidence -- you certainly don't have no evidence here.

So if I may turn to waiver, Your Honor, at least as to work product, the First Circuit is pretty clear in Blattman, and I don't think there's any dispute as to the standard. My colleague talked about work product protection being waived only when disclosure substantially increases the opportunity for potential adversaries to obtain the information. We agree with that standard.

But here, the information wasn't provided to an adversary as part of any adversary proceeding or with any anticipation that the regulators would disclose such information to any third parties. In fact, it was the

opposite. Instead, confidentiality was ensured by law.

Now, they don't talk about the Maryland statute, but of course the Maryland statute on its face is crystal clear. No subpoena, no FOIA, nothing, that the documents that are there are going to be preserved in confidence. And in New York, we've obviously put before Your Honor the trade secret exception. But one thing they haven't addressed, the other side, is section 1504(c) of the insurance law, which was in all three declarations before Your Honor, ignored by them in their brief, in their reply brief. But that basically prohibits disclosure by the New York Department of Financial Services of reports without prior written consent of the regulated insurer. And there are exceptions for public policy, but the regulators have never, you know, in the pattern exercised that prerogative.

So when you talk about the Maryland statute, which is 2-209 for Assured, when you talk about the trade secret exception in New York and section 1504(c) of the insurance law, you know, these prevent disclosure by the regulatory agencies. Plus, the insurers here have also expressly and affirmatively preserved confidentiality in a number of ways. When they provide the documents, as the declarations indicate, they will put legends on it and things like that about the confidentiality. And also there's an expected confidentiality that each of the insurers has attested to based on the pattern

of dealing with the regulators over time.

So here, there is no evidence that the insurers anticipated, expected or affirmatively anticipated any disclosure by the regulators and, in fact, reasonably and based on the law of the states, had an appropriate belief that there would be no disclosure.

THE COURT: Do you distinguish between the actual numbers and the analysis? I'm envisioning that what you do is you submit to the regulator some explanatory material, and it varies among the different insurers. But does your argument on work product distinguish between the actual number and an explanation?

MR. NATBONY: It does not. It applies to both the number and to any explanatory materials, for a specific reason. And as Mr. Berezin said, when you look at what we're talking about for loss reserves, that is, right, taking a number that says, okay, this is the potential payment stream, and we're going to, let's say the payment stream is a billion dollars, all right? And the reserve is 500 million. Well, what does that tell you? They know what the potential amount is of the liability. They have the insurance policies. They have the schedule of payments. So all of a sudden they don't -- it's not as if the number doesn't tell them anything. It does. All of a sudden they've got a number of 50 percent there. So that tells them, okay, well, their mindset is at 50 percent. So

they're still able to peer into the thoughts of why is it 50 percent and not 60 percent? Why is it 50 percent and not 40 percent? So no, I don't make a distinction between the two.

Lastly, Your Honor, just on the bank examiner privilege, at least with respect to Assured and Maryland, they don't spend much time on that and I think rightly so. Maryland has clearly done so, clearly asserted the privilege.

THE COURT: Do you agree, though, that it's the examiner's privilege?

MR. NATBONY: That is what the law says, Your Honor.

THE COURT: And New York has not asserted it.

MR. NATBONY: They have chosen not to become involved in this proceeding.

THE COURT: I understand that's what they do.

MR. NATBONY: I would -- I would hesitate to say that they -- you know, they have affirmatively said they are not asserting any privilege, because I think that's different, but they have chosen not to become involved in this proceeding at this time. Different than Maryland. And of course the reason for the bank examiner privilege is so that insurers can be encouraged to engage in a free and candid exchange of information. That should not be disturbed here, Your Honor.

THE COURT: All right. But you can't assert that on behalf of New York?

MR. NATBONY: No, Your Honor, I cannot.

THE COURT: Thank you.

MR. NATBONY: Thank you, Your Honor.

MR. BEREZIN: Thank you, Your Honor. Robert Berezin again for National Public Finance Guarantee.

I'm just going to briefly cover internal documents. We haven't talked about that that much. And it's never really been clear to me whether the Oversight Board is seeking internal documents or just the documents that were disclosed, but I thought it was worth mentioning just in case they are. Every argument we've made so far today about why the external -- what I'll call external reserve documents shouldn't be produced apply equally as to the internal documents, and that goes to the waiver issue.

So for attorney-client privilege, to the extent that there are -- not every single document, internal reserve document is covered by the attorney-client privilege, but for those that reflect communications from counsel, those would be privileged, attorney-client privileged. There's no exception to the attorney-client privilege. There's no weighing of it. It's absolute.

THE COURT: Let me just understand the record, though. You are not claiming the privilege on internal documents reflecting the value of collateral?

MR. BEREZIN: No, no, Your Honor. I'm talking about loss reserves.

THE COURT: So this argument goes to the loss reserve.

MR. BEREZIN: I'm sorry, Your Honor. Absolutely. Loss reserves. We do not have documents reflecting the value of the revenues. I'm talking about the internal documents. No. This relates to loss reserve documents.

THE COURT: And you're not claiming privilege on any such documents that reflect the collateral? You're not withholding documents?

MR. BEREZIN: Absolutely not, Your Honor. To the extent that we have documents that reflect the value of collateral, those documents would have been produced. I think the issue here is that they would like to see the amounts that existed as of the petition date, how much revenue is in there. And we don't have those documents. Certainly it makes sense that we wouldn't be permitted to suddenly spring on them documents from our files showing amounts of net revenue or revenue that PREPA had on the petition date. We don't have those documents or we would have produced them. Or we do have them, they provided them to us, and they're part of the agreed record.

So it's as far as our own internal documents, we do not have them. We did not create documents showing PREPA's revenue or net revenue on a certain particular date. And if we did, we would have produced them.

So back to the attorney-client privilege or internal

documents, those documents are privileged, and they should remain attorney-client privileged. There's no question about that. As far as waiver -- the same arguments apply on the work product that counsel made, again, putting aside work product, proportionality, it's just a no-brainer that these kinds of documents, internal documents that reflect loss reserves should not be subject to production.

The one thing special on the work product side, and I guess the attorney-client side, is that they weren't -- these are internal documents. They by definition weren't disclosed to anyone. So there's really no argument at all for waiver. The one argument you see or hear I think a little today and in their papers is sort of an at-issue waiver argument. And that is sort of sprinkled in there. And I think the argument goes something like, Well, you've brought this motion to lift the stay. We believe that such a motion would be denied on its face if you can't show a dollar value in bank accounts. You're not producing those documents, and therefore you -- and you may have some documents that don't relate to that but relate to loss reserves. That's an at-issue waiver. You put those documents at issue.

Clearly we have never put our loss reserves at issue. We've never cited them. We've never discussed them. We've never referenced them, and we never will. So they were not put at issue.

And as far as the subject matter waiver, there's no shield/sword disclosure going on here. Again, because we haven't put loss reserves at issue, they do not have anything to do with collateral the way they view it or the way we view it, and therefore there's no at-issue waiver or any other type of waiver.

THE COURT: Are you claiming attorney-client for the documents that were produced to the regulators, as opposed to work product?

MR. BEREZIN: I don't believe so, Your Honor. I believe work product.

THE COURT: I was having a hard time on that one.

MR. BEREZIN: That's work product, Your Honor.

THE COURT: He's passing you notes. Do you want to read them?

MR. NATBONY: Thank you for your help, Your Honor.

MR. BEREZIN: I will state for the record that counsel --

THE COURT: Hope you write clearly.

So let me tell you where I am. I think the privilege issues are quite difficult here, actually. And I don't have an easy answer to them. I don't think -- I think as the record now stands that there's no evidence that any documents have been withheld that relate to the value of collateral. I think that the movants have established that the loss reserves do not

reflect in any way the value of collateral. So I'm going to duck the other issues because I don't think I need to reach them.

But that having been said, we should make sure that the record is clear so that you don't get to the motion stage and there are documents that people are fighting about. So does it make sense -- and this is a dialogue, all right -- does it make sense to enter an order that says: One, if it hasn't been produced, you can't use it in connection with the pending motions. And I think that's sort of a given. If it hasn't been identified or produced without good cause, you can't use them in connection with the motion; and two, does it make sense to say to the movants you have to -- to the extent that you are depending on any documents, internal documents to establish the collateral value, you identify them, even if you've produced them already.

I'm not asking you to go through and say which of the PREPA documents, but if your documents are relevant to establishing collateral value, I think they ought to be identified somewhere along the line here and not be just buried in a stack of documents.

So let me ask PREPA. Does that help narrow or at least define the record, Mr. Despins?

MR. DESPINS: Briefly, Your Honor. I just want to say that the Committee's view on this is as follows: Of course

they won't use the documents they don't want to produce because they don't want to produce them because they're bad. If you believe them, they are relevant. But it's very important to understand, there's been no probing of this. They give us declarations. How -- is there a deposition of these declarations? No, there's no deposition. So we're taking the declaration as face value. And based on that, we're excluding all those documents. So to us, the remedy of saying they won't be able to use those documents is not really the right remedy.

THE COURT: You haven't challenged the veracity of these in any way.

MR. DESPINS: How could we, Your Honor? Because we don't have the loss reserves -- they're talking about a document we don't have. There's no --

THE COURT: So nowhere in these papers do you request a deposition. Is that what you're asking for?

MR. DESPINS: As far as the Committee is concerned, we didn't see the unredacted version of these declarations until last night because we've been asking for them for a while now and they refused to produce them to us until last night, so that's why we couldn't ask for anything. But it is bizarre to say that no evidence has been produced. How can we produce it? We don't know what the documents say. There's no ability to question --

THE COURT: I'm sorry. You don't have the unredacted

declarations?

MR. DESPINS: They had them.

THE COURT: They do.

MS. DALE: We do.

MS. DESPINS: But we didn't.

THE COURT: Well, you didn't read them until last night anyway.

MR. DESPINS: That's because they were not provided to us until last night, Judge.

THE COURT: I will say if PREPA had them --

MR. DESPINS: Okay. But I just -- to have the remedy that those documents will not be used by them is really not --

THE COURT: I hear you.

MR. NATBONY: Might I make the following suggestion, Your Honor? That the parties take Your Honor's comments and try to negotiate an order to present to Your Honor. And if we can't, then we'll --

THE COURT: Does that help or hurt?

MS. DALE: I'm happy to try to do that, Your Honor.

THE COURT: Okay. And let me ask you this -- and do you need a detailed written order on this? If you need me to write something complicated because you plan on appealing it, let me know. Otherwise, I'm just going to stick on the record --

MS. DALE: We will let you know. We will let you know

very quickly if we need something more. And can we just have a timeline in which we'll try to do this and get back to the court? Because we have depositions actually starting soon. So can we do that by the end of the week, or Monday?

MR. NATBONY: Yes.

MS. DALE: End of the week, Your Honor?

THE COURT: That would be fine.

MR. NATBONY: And I'm presuming we'll be able to work something out. If not, we'll let Your Honor know and submit --

THE COURT: If not, submit your separate versions, and I'll do something.

MR. NATBONY: Thank you, Your Honor, very much.

THE COURT: Okay. Is there anything further?

MS. DALE: Not for me, Your Honor.

THE COURT: Safe travels, everyone.

MR. NATBONY: Thank you, Your Honor.

(Adjourned, 3:22 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 27th day of February, 2019.

/s/ Kelly Mortellite

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Kelly Mortellite, RMR, CRR

Official Court Reporter